

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Authority, Among other Things, to Increase
Revenue Requirements for Electric and Gas
Service and to Increase Rates and Charges for gas
Service Effective on January 1, 2003.

Application 02-11-017
(Filed November 8, 2002)

**OPINION GRANTING INTERVENOR COMPENSATION TO THE
GREENLINING INSTITUTE FOR SUBSTANTIAL CONTRIBUTION TO
DECISION 04-05-055**

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**OPINION GRANTING INTERVENOR COMPENSATION TO THE
GREENLINING FOR SUBSTANTIAL CONTRIBUTION TO
DECISION 04-05-055**

This decision awards the Greenlining Institute (Greenlining) \$185,279.65 in compensation for its substantial contribution to Decision (D.) 04-05-055. This decision makes reductions to Greenlining's requested amount of \$339,018.54 because (a) some hours claimed were for work performed outside the scope of the proceeding; (b) Greenlining's requested multiplier is not reasonable and lacks adequate support; (c) some hours claimed were for work performed after D.04-05-055 was issued; (d) hourly rates approved were different from those requested; and (e) Greenlining failed to make a substantial contribution on certain issues.

1. Background

D.04-05-055 adopted distribution and generation revenue requirements in Pacific Gas and Electric Company's (PG&E) Test Year 2003 General Rate Case (GRC). The decision adopted two separate settlements covering electric generation, electric and gas distribution revenue requirements, and post-test year ratemaking. PG&E had requested a \$447 million increase in electric distribution revenues, a \$105 million increase in gas distribution revenues, and a \$149 million increase in generation revenues for Test Year 2003. PG&E also sought attrition year revenue requirement increases for electric distribution, gas distribution, and generation operations. Taken together, the Distribution Settlement and the Generation Settlement adopted in D.04-05-055 provide for Test Year 2003 revenue requirement increases of \$236 million in electric distribution revenues, \$52 million in gas distribution revenues, and \$38 million in generation revenues. In addition to the issues addressed in the two settlements, D.04-05-055 considered issues related to PG&E's request for a contribution to its Retirement

Plan trust, the Diablo Canyon Independent Safety Committee, and executive compensation. This proceeding remains open for consideration of several issues, including compensation requests filed by other parties eligible to claim intervenor compensation.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

- a. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
- b. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
- c. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
- d. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
- e. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention

or recommendations by a Commission order or decision.
(§§ 1802(h), 1803(a).)

- f. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.
(§ 1806.)

For discussion here, the procedural issues in Items a-d above are combined, followed by separate discussions on Items e and f.

3. Procedural Issues; Opposition to the Request

The first prehearing conference in this matter was held on January 28, 2003. Greenlining filed its timely NOI on January 24, 2003, asserting financial hardship. On April 9 2003, Administrative Law Judge (ALJ) Cooke ruled Greenlining is a customer under the Public Utilities Code and meets the financial hardship condition. Greenlining filed its request for compensation on July 26, 2004, within 60 days of D.04-05-055.

Greenlining has satisfied all the procedural requirements necessary to make its request for compensation. On August 29, 2004, PG&E filed a response to Greenlining's request. PG&E stated that Greenlining made a substantial contribution to D.04-05-055, but argued that Greenlining's request should be adjusted to: (1) remove hours spent after Greenlining submitted its final brief in this case; (2) remove the hourly rate multiplier; and (3) reflect hourly rates that are consistent with other decisions regarding Greenlining rates, with appropriate escalation for 2004 work. These issues are addressed later in this order.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (*See* § 1802(i).) Second, if the

customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.¹

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. With this guidance in mind, we turn to the claimed contributions Greenlining made to the proceeding.

Greenlining claims that it made a substantial contribution to D.04-05-055 concerning the areas of workforce diversity, supplier diversity, executive compensation, and philanthropy. Greenlining states that 90% of the work it performed in this case was related to executive compensation, and this effort significantly informed D.04-05-055 in light of the Commission's findings on this issue. Greenlining asserts that its efforts concerning executive compensation

¹ D.98-04-059, 79 CPUC2d, 628 at 653.

alone entitle Greenlining to full intervenor compensation for all of its hours in this proceeding.

Greenlining submitted testimony, cross-examined witness, filed briefs and submitted comments on the ALJ's proposed decision and a Commissioner's proposed alternate decision. Although we find that Greenlining made a substantial contribution to D.04-05-055 with respect to executive compensation, certain of Greenlining's efforts did not result in a substantial contribution to our decision. Further, Greenlining did not persuade the Commission to link executive compensation to meeting diversity goals or corporate philanthropic contributions. We review the four areas of asserted contribution below.

A. Supplier Diversity

In its initial testimony submitted in this proceeding, Greenlining proposed that the Commission require PG&E to calculate its compliance with Commission General Order (GO) 156 supplier diversity goals on the basis of total procurement, without utilizing excluded categories.² In response to a request from PG&E at the scheduling prehearing conference on May 21, 2003, the Assigned ALJ struck the portions of Greenlining's testimony related to GO 156 exclusions, and directed that those issues be addressed in Rulemaking (R.) 03-02-035 (revisions to GO 156). The ALJ found that the issue of supplier diversity was outside the scope of this proceeding, with the exception of

² General Order 156 requires utilities to establish minimum goals for procurement of products and services from women, minority, and disabled veteran business enterprises. Prior to the issuance of D.03-11-024, on November 14, 2003, § 8.5 of GO 156 allowed utilities to create "excluded categories" of products or services not subject to the goals. D.03-11-024 adopted Greenlining's proposal to eliminate these exclusions. We granted Greenlining intervenor compensation for its efforts in R.03-02-025, as we discuss later in this decision.

Greenlining's recommendation that PG&E be required to link its executive compensation to meeting minority contracting goals. The ALJ allowed Greenlining to further develop this recommendation, but, other than repeating it in briefs and comments, Greenlining did not provide additional support for its position.

Although the Commission has awarded full compensation for all hours of an intervenor's work in cases where intervenor's positions were not adopted, it has done so in cases where the decision benefited from the intervenor's analysis and discussion of the issues raised. Here, Greenlining's testimony related to exclusions and the supplier diversity program in general was stricken by ALJ ruling as those issues were beyond the scope of the general rate case.³

The Commission permitted Greenlining to make a showing that executive compensation should be linked to meeting certain performance goals in contracting, but indicated it would be difficult to adopt Greenlining's recommendation without a further affirmative proposal. Greenlining's proposal to link executive compensation to PG&E's supplier diversity record is further considered in our discussion of executive compensation issues, below.

After reviewing the record, we find that Greenlining's efforts related to supplier diversity did not benefit our decision. Greenlining provided no further support for its recommendation and no basis for linking executive bonuses to GO 156 goals. Moreover, we find that Greenlining continued to address issues previously ruled as outside the scope of the proceeding in both briefing and comments on the draft and alternate decisions. For example, despite the

³ Reporter's Transcript, p. 102, lines 14-22.

May 21, 2003, ALJ ruling, in its opening and reply briefs, Greenlining continued to recommend that “the general rate case is the best venue to address PG&E’s inadequate supplier diversity record” and that the Commission should “encourage PG&E to set goals to eliminate all exclusions within a specified period of time,” and “urge PG&E to set an internal goal of 30% of gross contracts to go to minority owned businesses by 2005.”⁴

Consistent with the ALJ Ruling, the Commission did not address exclusions or supplier diversity in the context of this proceeding. D.04-05-055 did not adopt any of Greenlining’s recommendations on supplier diversity, nor did the decision or the Commission’s deliberations benefit in any way from Greenlining’s efforts on this issue. The supplier diversity issue was addressed in R.03-02-035, a rulemaking that was the result of a petition filed by Greenlining. Therefore, we cannot find that Greenlining made a substantial contribution to D.04-05-055 concerning this issue.

B. Corporate Philanthropy

Greenlining also testified on corporate philanthropic contributions. As with supplier diversity, at the May 21, 2003, prehearing conference, the ALJ granted a motion to strike portions of Greenlining’s initial testimony on PG&E’s philanthropy and corporate contributions, ruling that it concerned below-the-line issues, and was therefore outside the scope of the general rate case. The ALJ limited Greenlining’s showing on corporate philanthropy to further development of its proposal to link executive compensation to meeting supplier diversity goals and/or philanthropic giving levels, but indicated that

⁴ Greenlining Opening Brief, p. 12.

Greenlining's argument would need to be further developed in the course of the proceeding.⁵

Ultimately, Greenlining's showing did not include testimony analyzing the reasonable level of executive compensation or philanthropy independently. Instead, Greenlining simply argued for a linkage, implying that such a connection would force the utility to improve its supplier diversity and philanthropic giving levels in order to maintain the current level of executive compensation. In addition, notwithstanding the ALJ ruling, Greenlining also continued to recommend that the Commission order modifications to PG&E's corporate giving policies generally, and specifically recommended that the Commission require PG&E to prepare annual reports detailing total philanthropic giving, the percentage of philanthropy that goes to low-income groups, and the percentage of philanthropy by race and ethnicity. "PG&E's philanthropic record should and must become a subject of Commission scrutiny and comment," "the CPUC should urge PG&E to prepare a report detailing its philanthropic giving...", and "the company should increase its philanthropic giving so that it is at least equal to two percent of PG&E's pre-tax profits, with at least eighty percent of this allocated to groups serving the low-income community."⁶

Greenlining's participation in the hearings, its briefing and its comments on the draft decision on corporate philanthropy areas did not make any substantial contribution to D.04-05-055. The Commission declined to address Greenlining's recommendations on philanthropy, stating:

⁵ RT, p. 103, lines 10-13 and 19-24.

...We decline Greenlining's request to encourage PG&E to tie executive compensation and . . . The California Supreme Court has upheld our policy of excluding charitable contributions from authorized rate recovery. (Pacific Tel. & Tel. Co. v. Public Util. Comm. (1965) 62 Cal. 2d 634,669.) The corollary of our policy to exclude from rates the expenses incurred by a utility for its philanthropic practices is that this Commission will not, as part of its ratemaking responsibilities, interject itself into utility management decisions regarding corporate philanthropy. Therefore, we find no basis upon which to adopt any of Greenlining's recommendations.⁷

For the same reason, the Commission also rejected Greenlining's suggestion that the Commission encourage PG&E to award at least two percent of its pre-tax income to low-income philanthropic causes. Therefore, we find that Greenlining did not make a substantial contribution with respect to corporate philanthropy, and we adjust the amount awarded to Greenlining accordingly, as discussed below.

C. Workforce Diversity

Consistent with the Assigned Commissioner's Ruling establishing Scope, Schedule and Procedures for Proceeding, dated February 13, 2003, and a subsequent ruling from the Assigned ALJ, PG&E submitted testimony on its workforce diversity levels over the last 10 years, and its present and future plans regarding workforce diversity.

Greenlining submitted testimony and cross-examined witnesses in support of its recommendation that the Commission: (1) encourage PG&E to set

⁶ Greenlining Opening Brief, pages 17 and 19.

⁷ D.04-05-055, *mimeo*, p. 110.

workforce diversity goals such as achieving at least 50% minorities on the board of directors and at least one-third minorities among the top 25 and top 100 employees by salary, (2) encourage PG&E to put more resources toward the development of qualified, experienced lower-level employees for promotion, (3) encourage PG&E to create a link between the company's success in areas of workforce diversity and executive bonuses, and (4) require annual reports on workforce diversity, which would be presented and compared at a hearing conducted by the Commission.

The Commission rejected Greenlining's recommendations, finding that PG&E's efforts to promote workforce diversity had proven successful and that Greenlining provided no compelling reason to require changes to the program. The Commission also declined to require annual reporting of workforce diversity statistics. Greenlining did not make a substantial contribution to D.04-05-055 on this issue.

D. Executive Compensation

Greenlining submitted testimony, cross-examined witnesses, and filed briefs arguing, among other things, that PG&E's executive compensation is excessive, and in relation to that compensation, its performance with respect to supplier diversity, philanthropic contributions and workforce diversity is inadequate. Greenlining also argued that PG&E's executive compensation reporting is not transparent and prevents effective review. Greenlining recommended that the Commission should (1) require PG&E to annually provide the total compensation packages for each of PG&E's top ten executives, including the value of stock options and retirement plans, (2) scrutinize the composition of PG&E's Nominating and Compensation Committee of the board of directors, (3) encourage PG&E to link executive compensation levels to

corporate philanthropic giving levels, and (4) encourage, if not require, PG&E and other utilities that have failed to achieve 15% in minority contracts to allocate additional funds for technical assistance to minority business associations, with the amount of funding based on the total compensation packages of PG&E's top executives.

In January 2004, PG&E Corporation awarded \$84.5 million in retention bonuses to 17 executives pursuant to a Senior Executive Retention Program. These bonuses vested only days after PG&E Corporation (the holding company), PG&E (the utility), and the Commission entered into a Modified Settlement Agreement regarding PG&E's emergence from bankruptcy.

On January 15, 2004, after this case was submitted, Greenlining filed a motion to take official notice of PG&E's executive bonuses and reopen the record. In its motion, Greenlining claimed that PG&E failed to adequately disclose these bonuses in its testimony or in response to discovery or cross-examination. Greenlining expressed concern that the lack of transparency on executive compensation prevents effective review and would have negative effects on ratepayers.

On January 30, 2004, Greenlining withdrew its motion and indicated that it no longer sought to reopen the record. In its notice of withdrawal, Greenlining stated:⁸

Subsequent to the filing of the Motion, PG&E and Greenlining met and discussed the PG&E Corporation Program, including information previously disclosed in certain PG&E proxy information. As a result of these

⁸ Greenlining Notice of Withdrawal of Motion of the Greenlining Institute, dated January 30, 2004.

discussions, PG&E has committed to join with Greenlining in proposing that the Commission revised General Order 77-K to require additional information about the total compensation of utility and holding company senior executives. To present these proposals to the Commission, Greenlining and PG&E today are filing a joint petition to modify Order Instituting Rulemaking (OIR) 03-08-019 in the pending General Order 77-K proceeding.

Under these circumstances, Greenlining is withdrawing its January 15, 2004 Motion in this GRC, including the allegation that the PG&E Corporation Program was not disclosed. Specifically, Greenlining no longer seeks to reopen Phase I of the GRC.

In a joint petition in R.03-08-019 filed contemporaneously with Greenlining's withdrawal, Greenlining and PG&E proposed that each public utility with annual operating revenues over \$1 billion include an additional table in its annual GO 77 report listing the total compensation of the top executive officers of the utility's holding company as well as the total compensation of all other utility officers.

Ultimately, despite Greenlining's withdrawal, the Commission continued its review of PG&E's Senior Executive Retention Program on its own motion to ensure that shareholders, and not ratepayers, were responsible for funding the program. The Commission determined that none of the \$84.5 million would be charged to ratepayers, and adopted additional reporting measures to ensure that the \$84.5 million was charged to shareholders.

The Commission rejected Greenlining's specific proposals related to executive compensation, finding that Greenlining's request that the Commission encourage PG&E to link executive compensation to philanthropic contributions, workforce diversity, or supplier diversity was not adequately supported by the

evidence.⁹ Without prejudging the outcome of R.03-08-019, the Commission required PG&E to expand its GO 77 report to list the total compensation of the top executive officers.

Therefore, while Greenlining claims that its participation in this case resulted in a change to GO 77, this claim is somewhat misleading. The Commission's decision in R.03-08-019 granted a petition to consider such changes. Although we find that Greenlining made a substantial contribution to D.04-05-055 regarding executive compensation, we disagree with Greenlining regarding the extent of that contribution. D.04-05-055 highlighted certain executive compensation issues, expressed concern regarding PG&E's Senior Executive Retention Program, and adopted a change in reporting for executive compensation for PG&E. However, D.04-05-055 did not directly result in a change to GO 77, nor did it consider or approve of a settlement related to philanthropic contributions.

In summary, we find that Greenlining made a substantial contribution to D.04-05-055, as described above. After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable. Because only portions of Greenlining's participation resulting in a substantial contribution, we make appropriate adjustments to Greenlining's request as discussed below.

⁹ D.04-05-055, Finding of Fact 34, p. 137.

5. Reasonableness of Requested Compensation

Greenlining requests \$339,018.54 for its participation in this proceeding, as follows:

Attorney/Expert	Year	Rate	Hours	Total	Multiplier Requested	Total
Robert Gnaizda	2003	\$450	101.8	\$45,810.00	25%	\$57,262.50
Robert Gnaizda	2004	\$495	149.6	\$74,052.00	25%	\$92,565.00
John Gamboa	2003	\$350	9.65	\$3,377.50	25%	\$4,221.88
John Gamboa	2004	\$385	17.2	\$6,622.00	25%	\$8,277.50
Michael Phillips	2003/2004	\$360	73.5	\$26,460.00	50%	\$39,690.00
Gelly Borromeo	2003/2004	\$300	11	\$3,300/00	None	\$3,300.00
Itzel Berrio	2003	\$290	187.5	\$54,375.00	25%	\$67,968.75
Itzel Berrio	2004	\$310	162	\$50,220.00	25%	\$157.50
Noelle Abastillas	2003	\$90	1.75	\$157.50	None	\$157.50
Noelle Abastillas	2004	\$110	9.45	\$1,039.50	None	\$1,039.50
Total Fees				\$268,713.50		\$337,257.63
Total Costs				\$1,760.91		\$1,760.91
Grand Total						\$339,018.54

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

Because not all of a customer's efforts in a proceeding result in substantial contributions to Commission's decisions, we must also assess whether the hours claimed are reasonable. Greenlining claims that 90% of the hours of Gnaizda, Gamboa, Berrio and Abastillas, and 100% of the hours of Phillips were spent on executive compensation issues, leaving 10% of these individuals' hours devoted to workforce diversity, supplier diversity, and philanthropy. Greenlining further claims that the total number of hours allocated to this case is reasonable. We find several exceptions, discussed below.

First, based on a review of the record in this proceeding, we find Greenlining's allocation of 90% of the hours of Gnaizda, Gamboa, Berrio and Abastillas to executive compensation unreasonable. Greenlining documented the hours of its lawyers and experts by presenting a daily breakdown of those hours and an accompanying brief description of each activity in most cases. Although Greenlining does not break down its efforts by issue, which would have been helpful, it is clear from the record that an allocation of 90% of Greenlining's hours to executive compensation is inappropriate and unreasonable. For example, more than 50% of Berrio's claimed hours were claimed for work performed in 2003, prior to Greenlining's motion to reopen the record to take official notice of PG&E's executive bonuses.

The work performed by Berrio in 2003 includes such activities as preparing for the PHC, reviewing rulings, PHC statements, NOIs, transcripts, data requests, and other parties' testimony. This work can be expected to be fairly general in nature and is not typically issue-specific, and it is unreasonable to assume that 90% of this general work was related to one issue, given the multitude of issues raised by PG&E and other parties in this case.

Other work performed by Berrio can be broken down by issue but also does not support a finding that 90% of Berrio's work was related to executive compensation. That work includes preparing for and cross-examining certain witnesses and preparing and reviewing the opening and reply briefs and opening and reply comments on the proposed and alternate decisions. The record in this case shows that Berrio participated in the cross-examination of at least five PG&E witnesses: Smith, Jereb, Leder, Wells, and Quigley, and assisted in PG&E's cross-examination of Greenlining witness Gnaizda. Two of these witnesses (Smith and Gnaizda) were cross-examined in part on executive

compensation issues. The other witnesses (Jereb, Leder, Wells, and Quigley) sponsored testimony and were cross-examined on workforce diversity, supplier diversity and philanthropy. The record in this case also shows that Greenlining's opening and reply briefs consistent of approximately 25% argument and recommendations related to executive compensation (5 pages out of 20, and 3 pages out of 10 respectively) with the remaining pages devoted to workforce diversity, supplier diversity, and philanthropy. In addition, Greenlining sponsored 9 exhibits that were admitted into the record in this case, three of which were related to Greenlining's recommendations on executive compensation.

Given the record in this case, we find that it is reasonable to conclude that 50% of the hours of Berrio and 100% of the hours of Phillips were spent on executive compensation issues, leaving 50% of Berrio's hours spent on workforce diversity, supplier diversity, and philanthropy. Both Gamboa and Gnaizda performed more limited roles in this case during 2003. The majority of both Gamboa's and Gnaizda's hours were claimed for work performed in 2004, after Greenlining's January 13, 2004, Motion. As discussed below, certain of the hours claimed during this time are related to activities that are not compensable under the intervenor compensation program. With the adjustments discussed below, and having found that Berrio performed the majority of the work on the other issues, it is reasonable to conclude that 90% of the remaining hours claimed by Gamboa and Gnaizda were attributable to executive compensation issues.

We find it unnecessary to allocate Abastillas' work to particular issues as her work was described as performing general support and the limited number of hours claimed by Abastillas supports this claim.

Second, we have carefully reviewed the record in this case and note that, despite clear rulings from the ALJ that supplier diversity issues were outside the scope of the proceeding, with the limited exception of Greenlining's proposal to link executive compensation to PG&E's compliance with GO 156,¹⁰ Greenlining continued to advocate positions on supplier diversity in briefs and comments. In light of the Commission's determination that this issue was beyond the scope of the proceeding, and our finding that Greenlining did not make a substantial contribution on the issue of supplier diversity, we adjust Greenlining's compensation request to remove time spent on supplier diversity and exclusions.¹¹ (Gnaizda, 6.9 hours, Gamboa, .69 hours, Berrio, 56 hours, Borromeo, 11 hours.)

Third, as discussed above, the ALJ granted a motion to strike Greenlining's testimony on PG&E's philanthropy and corporate contributions because they are below-the-line issues and outside the scope of the general rate case. The ALJ limited Greenlining's showing on corporate philanthropy to further

¹⁰ As discussed above, we consider Greenlining's proposal to link executive compensation to supplier diversity in our discussion of executive compensation issues, Section 4.D.

¹¹ Calculated by adding Borromeo's 11 hours devoted to supplier diversity to 3% of the total hours claimed by Gnaizda and Gamboa, and 16% of the hours claimed by Berrio. (Gnaizda, 7.54 hours, Gamboa, .81 hours, Berrio, 30 hours.) The 3% and 16% reduction in these individuals hours is intended to reflect approximately one-third of 10%, and one-third of 20%, respectively, of their hours, the amount Greenlining claims was spent on workforce diversity, supplier diversity, and philanthropy combined. We do not reduce Abastillas hours by 10% as her work was described as performing general support.

development of its proposal to link executive compensation to philanthropic giving levels.¹²

In its discussion of executive compensation issues, D.04-05-055 explicitly rejected Greenlining's request to encourage PG&E to link executive compensation and philanthropic contributions. We explained that since the Commission does not allow rate recovery for charitable contributions, the Commission will not, as part of its ratemaking responsibilities, interject itself into utility management decisions regarding corporate philanthropy.¹³ Therefore, we adjust Greenlining's request to remove the time allocated to corporate philanthropy in general.¹⁴

Fourth, time spent negotiating the \$60 million philanthropic commitment referred to by Greenlining does not involve the settlement of a Commission proceeding. No settlement regarding executive compensation was filed or considered in this proceeding, and D.04-05-055 does not address the settlement. Therefore, Greenlining's efforts related to the philanthropies contributions did not contribute substantially to D.04-05-055 and are not compensable. We adjust Greenlining's request to remove hours exclusively related to negotiation of the \$60 million philanthropic commitment. (Gnaizda, 7 hours, Abastillas, 2.3 hours.) This reduction ensures that we are only granting intervenor compensation for

¹² RT, p. 103, lines 10-13 and 19-24.

¹³ See D.04-05-055, *mimeo*, p. 110.

¹⁴ Calculated as 3% of the total hours claimed by Gnaizda and Gamboa and 16% of the total hours claimed by Berrio, to reflect approximately one-third of the 10% and one-third of 50% respectively, of the total hours claimed by Greenlining for these individuals. For the reason stated above, we do not reduce Abastillas hours.

those efforts that resulted in a substantial contribution to D.04-04-055, as required by § 1802(i).

Fifth, we adjust Greenlining's hours to exclude professional time claimed for work after D.04-05-055 issued (Gnaizda, 10.6 hours, Gamboa, 3.1 hours, Abastillas, .75 hours). Greenlining requests compensation for work performed in meeting with the Securities and Exchange Commission and Commission President Peevey after D.04-05-055 was issued. PG&E opposes this portion of Greenlining's request. D.04-05-055 concluded the revenue requirement phase of PG&E's Test Year 2003 general rate case. Greenlining's claimed post-decision work is related to its motion filed in R.03-08-019. Although D.04-05-055 adopted a requirement for PG&E identical to one included in that motion, Greenlining's work after the decision cannot be characterized as having assisted us in making our decision, which § 1802(i) requires. We deny this portion of Greenlining's request.

We also remove time that is not compensable through the intervenor compensation program, such as time devoted to press communications, "all-utility" communications, community meetings, ethnic group organization meetings, and travel to such meetings. (Gnaizda 8.05 hours, Gamboa, .7 hours, Abastillas, .9 hours.)

To further assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

Greenlining contends that its participation should be valued at more than \$435 million, claiming that its participation in this proceeding would result in at least a \$375 million increase in minority contracting and a \$60 million philanthropic commitment by PG&E. As both of these issues are outside the scope of this proceeding and not addressed in D.04-05-055, Greenlining has not shown how its participation in this proceeding resulted in the stated benefits.

Furthermore, we note that Greenlining has already requested, and has been granted, intervenor compensation for its substantial contribution to Petition 02-10-035 and D.03-11-024, in R.03-02-025, the Commission's rulemaking into changes to GO 156. D.03-11-024 adopted Greenlining's proposal to eliminate the exclusions permitted by § 8.5 of GO 156. In its request for intervenor compensation for substantial contribution to D.03-11-024, Greenlining made an almost identical claim to the one presented here; that its participation would result in an estimated \$2 billion of additional contracts to diverse suppliers over five years, or more than \$400 million annually.¹⁵ It is therefore unreasonable for Greenlining to also claim, *in this proceeding*, that its efforts were productive in this regard. We also note, as discussed above, that no settlement regarding philanthropy was filed or considered in this proceeding.

Greenlining's substantial contribution in this case concerned matters of policy. In such cases, productivity is not easily quantified and we are forced to evaluate an intervenor's productivity using qualitative standards such as the breadth of the proceeding, the significance of the policies, and the impact the intervenor had on the outcome. While we reject Greenlining's claim that its

¹⁵ D.03-11-024, *mimeo*, p. 12.

participation would result in ratepayer benefits of \$435 million, we find that ratepayers will benefit from Greenlining's advocacy related to executive compensation.

Although Greenlining withdrew its January 15, 2004, Motion regarding PG&E's Senior Executive Retention Program shortly after filing it, Greenlining's efforts prompted the Commission to look more closely at the issue and adopt certain accounting and reporting measures to ensure that the program awards were not charged to ratepayers.¹⁶

Travel time and time spent preparing the compensation request is compensable at one-half of the professional rate. Greenlining's task descriptions properly describe when time was spent on these activities, reducing by half the number of hours spent on travel time and preparation of the compensation request (Berrio, 44.1 hours reduced to 22.2 hours), rather than billing the full number of hours by one-half the hourly rate.

Finally, in determining compensation, we consider the market rates for similar services from comparably qualified persons. We discuss Greenlining's representatives below.

A. Robert Gnaizda

Greenlining requests an hourly rate for Gnaizda of \$450 for work performed in 2003 and \$495 for work performed in 2004. Gnaizda is Greenlining's General Counsel and Policy Director, and has participated in Commission proceedings since 1971. The Commission previously approved a rate of \$450 for work performed by Gnaizda in 2003 in D.04-08-025 and we find this rate reasonable. The requested rate of \$495 for 2004 is an increase of 10%

over 2003. As a guideline, Resolution ALJ-184 provides for a general rate increase of 8% for 2004 over 2003. Applying the 8% escalator, rounded up to the nearest \$5, results in an hourly rate for Gnaizda of \$490 for 2004. We find this rate reasonable and adopt it for this proceeding.

B. John Gamboa

Greenlining seeks rates for Gamboa of \$350 for 2003 and \$385 for 2004. The Commission approved a rate of \$330 for Gamboa for 2003 in D.04-08-020 and D.04-10-033, and we find that rate reasonable. Applying the 8% escalator adopted in ALJ-184, and rounding up to the nearest \$5, results in a 2004 rate of \$360, for Gamboa, which we adopt in this case. Greenlining presented no additional evidence that supports a different rate.

¹⁶ See D.04-05-055, O.P. #11.

C. Itzel Berrio

Greenlining seeks hourly rates of \$290 for work performed in 2003 and \$310 for 2004 for Berrio, but claims that these rates are well below market rates for an attorney of Berrio's experience and qualifications. The Commission previously approved hourly rates for Berrio of \$275 for work performed in 2003 in D.04-08-020, and \$300 for work performed in 2004, adopted in D.04-10-033. The \$300 rate for 2004 is 9% higher than the 2003 rate for Berrio which exceeds the 8% escalator we adopted in ALJ-184. In adopting the \$300 rate for 2004, the Commission noted this rate was "reasonable in light of the "Of Counsel" surveys presented by The Utility Reform Network (TURN) and the information provided by Greenlining on associate rates," and was also "fair considering the rate of \$325 an hour we adopt today for Mailloux of TURN, who has four additional years of experience as an attorney."¹⁷ Greenlining does not provide evidence convincing us to change our determination here. We note that the Pearl Declaration, attachment K to Greenlining's request for intervenor compensation, also supports a rate of \$300 for Berrio by virtue of its assertion that 2004 rates for legal counsel at various law firms ranged from \$265 per hour for an attorney with 5 years of experience to \$320 per hour for an attorney with 9 years of experience.¹⁸ We find the previously adopted rates of \$275 for 2003 and \$300 for 2004 for work performed by Berrio reasonable.

¹⁷ D.04-11-033, *mimeo*, p. 10.

¹⁸ July 26, 2004 Greenlining Request, Attachment K, p.7.

D. Michael Phillips

Greenlining seeks an hourly rate of \$360 for work performed by its expert Phillips in this proceeding in 2003 and 2004. The Commission has previously approved a rate of \$310 for Phillips for 2003 in D.04-08-025. Applying the 8% escalator adopted Resolution ALJ-184 results in a rate of \$335 for Phillips for 2004. We find this rate reasonable.

E. Gelly Borromeo

Greenlining seeks an hourly rate of \$300 for Borromeo for work performed in 2003. Greenlining's request is moot, however, because we do not find her work compensable in this case.

F. Noelle Abastillas

Greenlining seeks an hourly rate of \$90 for Abastillas, its paralegal, for work performed in 2003 and a rate of \$110 for 2004. We adopted an hourly rate of \$90 for Abastillas for 2003 in D.04-08-040. For 2004, the requested rate reflects a 22% increase over the 2003 rate. Applying the 8% escalator adopted in Resolution ALJ-184 and rounding up to the nearest \$5, results in a rate of \$100 for 2004. We find this rate reasonable and adopt it for this proceeding.

G. Requested Multiplier

Greenlining requests that we apply a multiplier of 25% for the work of Gnaizda, Gamboa, and Berrio, and a 50% multiplier for the work of Phillips. Greenlining states its participation justifies a multiplier up to 450%. As support, Greenlining claims that (a) its participation was efficient; (b) its participation resulted in ratepayer benefits of \$435 million; (c) its fee request is based on below-market hourly rates; and (d) its participation raises unique issues that would not have been addressed but for its efforts. PG&E objects to Greenlining's request for a multiplier.

In practice, a multiplier award is rare as it represents an additional cost to ratepayers, which must itself be justified as fair and reasonable. As the Commission explained in an earlier intervenor compensation decision, “our standards for applying hourly rate multipliers to attorney fees are necessarily high. If we did not set and maintain high standards, many attorney fees in compensation requests would include multipliers, and we would no longer be adopting attorney fees based on market rates for comparable training and experience as required by Section 1804.” (D.02-09-003, 2002 Cal. PUC LEXIS 531, *18.) This policy, equally applicable to multipliers for expert witness fees, is not new but has been articulated in various ways in intervenor compensation decisions dating back to the mid-1980s.¹⁹

Commission decisions authorize two different types of multipliers, sometimes differentiated as an “efficiency adder” or a “fee enhancement.” Both result in increased awards by multiplying the authorized hourly rate by the authorized adder or enhancement. An “efficiency adder” has been approved where a customer’s participation involved skills or duties far beyond those normally required. An example is an attorney who develops and sponsors necessary technical testimony, performing the dual roles of counsel and expert

¹⁹ D.98-04-059, which issued in our most recent intervenor compensation rulemaking, confirms this policy.

not only with a very high degree of professionalism but also at a lower total cost than the hourly fee of the two individuals. A “fee enhancement” has been approved where the Commission determined the intervenor had achieved exceptional results.

Greenlining’s request for a multiplier in this proceeding is unpersuasive. The request for an efficiency adder is unsupported by the record in this proceeding, as Greenlining’s representatives did not perform work requiring skills or duties beyond those normally required in Commission proceedings. The issues raised by Greenlining were not novel or particularly difficult; the issue of workforce diversity was raised initially by the Assigned Commissioner in the February 13, 2003, Scoping Ruling, and has been presented in previous utility general rate cases. The issue was presented as a routine analysis of the workforce diversity figures presented by PG&E, and did not require any extensive research or factual development on the part of Greenlining.

Greenlining’s efforts related to executive compensation, while substantive, also did not demonstrate unusual efficiency. Furthermore, Greenlining continued to advocate positions on supplier diversity and corporate philanthropy issues that had been previously ruled outside the scope of the proceeding. Of particular note, the issue of PG&E’s use of exclusions was ruled outside the scope of the proceeding as it was already being addressed by the Commission in R.03-02-035, a separate proceeding in which Greenlining was actively participating. Nonetheless, Greenlining continued to advocate its position on this same issue in this proceeding, requiring the Commission and the parties to address the issue twice, a clearly inefficient result.

We also find that the issues raised by Greenlining resulted in no unusual ratepayer benefit. While Greenlining argues that its participation in this proceeding resulted in an additional \$375 million in supplier diversity contracts, Greenlining has already requested, and been granted compensation for, its substantial contribution to Petition 02-10-035 and D.03-11-024, issued in R.03-02-025, the Commission's rulemaking into changes to GO 156, in which the Commission considered and adopted this modification.

We also find that the "settlement" Greenlining claims would result in a \$60 million fund does not stem from PG&E's test year 2003 general rate case. Regardless of the merits of such a settlement, its substance concerns PG&E's charitable giving policies, an issue that is outside the scope of this proceeding. In addition, as PG&E notes, "the fact that PG&E has discussed its philanthropic commitment with Greenlining and others and is now able to enhance its corporate giving program does not justify a multiplier, in light of the Commission's conclusion in this case that it has no basis upon which to address the level of PG&E's philanthropic contributions."²⁰

We emphatically reject Greenlining's contention that the requested hourly rates are below market. The hourly rates approved in this proceeding are in line with those authorized for other participants in this proceeding and other proceedings before the Commission. As required by Section 1806, we have set Greenlining's hourly rates on the basis of "market rates paid to persons of comparable training and experience who offer similar services."

²⁰ Response of PG&E to requests of NRDC, Aglet, and Greenlining for intervenor compensation, dated August 25, 2004, p. 13.

Finally, we note that the Commission grants intervenor compensation for substantial contribution only for positions or recommendations raised that are unique or that materially complement or supplement those advocated by other parties. Simply raising a unique issue does not warrant a multiplier. Instead, it is a minimum requirement for compensation under the statute. Although Greenlining alone raised the issue of excessive executive compensation, these efforts did not exceed the duties and responsibilities of an attorney whose efforts merit an award of intervenor compensation. (D.00-04-003, *see also* D.04-08-025). We therefore decline to apply a multiplier to this award.

The itemized direct expenses submitted by Greenlining include costs for photocopying (\$1,399.10) and postage (\$361.81) and total \$1,760.91. We find these costs reasonable.

6. Award

As set forth in the table below, we award Greenlining \$185,279.65.

Attorney	Hours	Rate	Year	Amount
Gnaizda	95.69	\$450	2003	\$43,061.40
	119.99	\$490	2004	\$58,795.59
Berrio	93.75	\$275	2003	\$25,781.25
	81	\$300	2004	\$24,300.00
Abastillas	1.75	\$90	2003	\$157.50
	5.5	\$100	2004	\$550.00
Subtotal				\$152,645.74

Expert Witness Costs

Witness	Hours	Rate	Year	Amount
Gamboa	9.07	\$330	2003	\$2,993.10
	12.59	\$360	2004	\$4,532.40
Phillips	51	\$310	2003	\$15,810.00
	22.5	\$335	2004	\$7,537.50
Subtotal				\$30,873.00
Expenses				\$1760.91
Grand Total				\$185,279.65

The award is to be paid by PG&E, the regulated entity in this proceeding. Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after Greenlining filed its compensation request and continuing until full payment of the award is made.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Greenlining's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

8. Assignment of Proceeding

Commissioner Michael R. Peevey is the Assigned Commissioner. Julie Halligan is the assigned ALJ in this proceeding.

Findings of Fact

1. Greenlining made a substantial contribution to D.04-05-055 as described herein.
2. Greenlining requested hourly rates for attorneys and experts that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.

3. Greenlining failed to demonstrate factors justifying its requested multiplier.

4. The total of the reasonable compensation is \$185,279.65.

Conclusions of Law

1. Greenlining has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making substantial contributions to D.04-05-055.

2. Greenlining should be awarded \$185,279.65 for its contribution to D.04-05-055.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that Greenlining may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Greenlining is awarded \$185,279.65 as compensation for its substantial contributions to Decision 04-05-055.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay Greenlining the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning October 9, 2004, the 75th day after the filing date of Greenlining's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decision(s):	D0405055
Proceeding(s):	A0211027, <i>et al.</i>
Author:	ALJ Halligan
Payer(s):	PG&E

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Greenlining Institute	7/26/04	\$339,018.54	\$185,279.65	25% Requested but denied	(1) Failure to justify hourly rates; (2) Disallow for non-substantial contribution; (3) communicating with press not compensable; (4) hours claimed after decision issued; (5) failure to justify multiplier.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Gnaizda	Attorney	Greenlining	\$450	2003	\$450
		Attorney	Greenlining	\$495	2004	\$490
John	Gamboa	Expert	Greenlining	\$350	2003	\$330
		Expert	Greenlining	\$385	2004	\$360
Itzel	Berrio	Attorney	Greenlining	\$290	2003	\$275
		Attorney	Greenlining	\$310	2004	\$300
Michael	Phillips	Expert	Greenlining	\$360	2003	\$310
		Expert	Greenlining	\$360	2004	\$335
Noelle	Abastillas	Support	Greenlining	\$90	2003	\$90
		Support	Greenlining	\$110	2004	\$100